

**D.**

**Texas Department of Savings and  
Mortgage Lending**

**Industry**

**and**

**Departmental Operations**

**and**

**Legislative Activities**

# D. Texas Department of Savings and Mortgage Lending

## TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### EXECUTIVE SUMMARY

As of February 29, 2011

ACTIVITY	FY 2010		FY 2011	2012 FISCAL YEAR						
				1 <sup>st</sup> **	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	QTR	YTD	
INDUSTRY PROFILE										
Number of S&L / SSB Charters	0	29	0	30	0	31	0	31	0 / 31	
S&L / SSB Total Assets (Millions)	\$0	\$8,164	\$0	\$8,622	\$0	\$9,093	\$0	\$9,488 *	\$0 \$9,488 *	
RML O Individual Licensees **	7,883		13,121		13,462		11,281		11,281	
RML O Company Licensees /Registrants **	1,144 / 335	1,197 / 338	1,221 / 351	1,038 / 344	/	/	/	1,038 / 344	1,038 / 344	
EXAMINATION ACTIVITY										
Thrift - Institutions	47	36	9	8					17	
RML O - Licensees / Registrants	2,777	3,210	829	786					1,615	
THRIFT INDUSTRY PROFILE										
CAMELS 1	3	2	1	1	1				1	
CAMELS 2	12	20	23	23	23				23	
CAMELS 3's, 4's & 5's	14	8	7	7	7				7	
APPLICATIONS (Filed)										
Thrift Charter / Conversion / Merger	7	8	0	1	1				1	
Thrift Changes	15	13	4	4	4				8	
RML O Amendments **	1,647	32,110	12,094	12,206					24,300	
2012 FISCAL YEAR										
ACTIVITY	FY 2010	FY 2011	1 <sup>st</sup> **	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	QTR	YTD		
			QTR	QTR	QTR	QTR				
ENFORCEMENT ACTIONS (Outstanding)										
Thrift - Voluntary Control / C&Ds	1 / 5	2 / 6	2 / 6	2 / 6				2 / 6		
RML O - Orders / C&Ds	233 / 113	379 / 106	56 / 85	95 / 117				151 / 202		
Complaints - Received / Disposed	788 / 867	671 / 689	144 / 128	143 / 138				287 / 266		
AGENCY PERSONNEL STAFFING (Period end)										
Examination – Thrift / Broker	16.6 / 17.8	17.2 / 19.7	19.1 / 18.5	20.0 / 16.3				20.0 / 16.3		
Licensing / Registration	8.7	10.5	9.2	9.7				9.7		
Legal / Complaints	7.1	8.0	8.3	8.1				8.1		
Administration	6.4	6.5	7.1	7.6				7.6		
Total Personnel	56.6	61.9	62.3	61.6				61.6		

(N4) NOT AVAILABLE

RML O = RESIDENTIAL MORTGAGE LOAN ORIGINATION

\* Based on the December 31, 2011 FDIC CALL REPORT.

\*\* Subject to change with Clarification from Reports from NMLS.

## **1. Industry Status and Departmental Operations – State Savings Bank Activity:**

### **a. Industry Status**

State-chartered thrift assets under the Department's jurisdiction totaled \$9.5 billion as of December 31, 2011, which represents an increase of 7.5% or \$661 million over December 31, 2010. Increased profitability occurred in 71% of the thrift institutions during 2011, due to an increase in the level of and yield on loans, and to a lesser extent securities. Excluding one institution with significant non-comparative issues after acquiring and merging with another bank, the overall industry net income decreased by \$3.7 million compared to 2010. Excluding one institution with a business model aligned to profit from the acquisition of troubled assets at discounted prices, nonperforming loans and other real estate foreclosed decreased in state-chartered thrifts during 2011 by \$54.9 million to \$78.8 million or 1.37% of total assets. Contractually past due loans, nonaccrual loans, and foreclosed real estate held by state-chartered thrifts continue to be monitored closely by state and federal regulators.

### **b. Charter and Application Activity**

On December 30, 2011, an application was received from Texas Savings Bank, SSB, Snyder, to sell its Liberty Hill branch office to Classic Bank, N.A., Cameron, Texas, and was approved February 14, 2012.

On January 17, 2012, an application was received from Oasis Bank, SSB, Houston, to relocate its home office, and was approved February 29, 2012.

On January 26, 2012, an application was received from Spirit of Texas Bank, SSB, College Station, to relocate its Houston branch office, and was approved February 24, 2012.

On February 2, 2012, an application was received from Synergy Bank, SSB, to relocate its Denton branch office, and was approved March 9, 2012.

### **c. Wholesale Savings & Loan Charter and Application Activity**

Pearl Savings Association's application was conditionally approved on March 31, 2011, and has been placed in abeyance until March 31, 2013.

### **d. Recap of Problem Institutions/Enforcement Issues**

As of December 31, 2011, the majority of state savings banks are rated satisfactory or better (CAMELS Composite 1 or 2). As of December 31, 2011 seven state savings banks were in the "problem institution" category with CAMELS Composite rating of 3, 4, or 5. The progress of any "problem institution" is monitored through more frequent on-site visits and examinations and off-site review of compliance with issued and outstanding formal and informal enforcement actions, as well as the normal review processes and the use of a supervisory agent when deemed necessary.

### **e. Other Issues**

Compliance Observer Program – The Thrift Compliance Examiner has received FDIC's schedule of compliance examinations for 2012 and has determined which exams to participate in onsite.

## 2. Industry Status and Departmental Operations – Mortgage Lending Activity:

### a. Residential Mortgage Loan Originators

#### Current Licensing Population

License Type As of 3/31/2012	Approved		
	Company (MU1)	Branch (MU3)	Individual (MU4)
<i>Auxiliary</i>	22	n/a	45
<i>CUSO</i>	7	1	35
<i>FSC</i>	1	n/a	467
<i>Independent Contractor</i>	56	n/a	73
<i>Mortgage Company'</i>	972	272	2,758
<i>Mortgage Banker</i>	345	1,213	8,166
<i>Mortgage Servicer</i>	73	n/a	n/a
<b>Totals</b>	<b>1,476</b>	<b>1,486</b>	<b>11,544</b>

The license renewal and reinstatement period ended February 29, 2012; and at that point any license that had not been renewed or reinstated expired. There were 189 company, 203 branch, and 3,085 individual licenses that expired. The Department continues to receive a high number of applications, for the second quarter the average was 470 per month. Additionally, as of the second quarter 2,277 applications have been approved.

### b. Mortgage Examinations

During first half of fiscal year 2012 a total of 153 examinations were conducted covering 1,615 licensees.

The number of examinations is lower when compared to the same period in fiscal year 2011 although the number of licensees examined increased by 45%. The sharp increase in the number of licensees examined is a direct result of large mortgage banker examinations conducted during the first six months of fiscal year 2012.

Below is a breakdown of mortgage examination results by compliance rating for the first half of fiscal year 2012. As shown in the chart below, the stratification of examination ratings during the past six months reflects a deteriorating trend in the 1, 2 & 3 rating categories when compared to fiscal year 2011. The decline can be attributed to the unlicensed activity which has been discovered in the first round of mortgage banker examinations. The widespread unlicensed activity is anticipated to be a onetime event and compliance ratings should improve after the initial round of mortgage banker examinations is completed.

**Mortgage Examination Compliance Ratings**  
(Percentages exclude exams of "Not Rated" entities which have not originated)

	# Mortgage Exams	Rated "1"	%	Rated "2"	%	Rated "3"	%	Rated "4"	%	Rated "5"	%
Historical Exam Ratings											
10/13/01 - 8/31/09			14%		31%		35%		17%		3%
Fiscal Year 2011											
9/1/10 - 8/31/11	440	129	29%	173	39%	101	23%	35	8%	2	<1%
Fiscal Year 2012											
9/1/11 - 2/29/12	153	28	18%	50	33%	64	42%	11	7%	0	0%

**c. Consumer Complaints/Legal Issues**

Consumer Complaints. During the first half of fiscal year 2012, a total of 287 consumer complaints were received. As of February 29, 2012, a total of 83 consumer complaints were open with none being aged over 180 days and 84% of the open complaints were aged less than 90 days.

Legal Issues. During the period of February 01, 2012 through March 31, 2012, the Department reports the following Enforcement Activity:

**Substantive Disciplinary Cases**

Notices of Hearings Issued: 10  
Hearings Held: 0  
Final Orders as a Result of a Hearing: 2  
Agreed Orders: 9  
Cease and Desist Orders: 27  
Suspension Orders: 0  
Orders Lifting Suspension: 9

**Appeals of License Denials**

Notices of Hearings Issued: 9  
Appeals Received: 9  
Hearings Held: 2  
Final Orders as a Result of a Hearing: 0  
Dismissal Orders: 0  
Agreed Orders: 0

**Annual Report Appeals**

Notices of Hearings Issued: 0  
Hearings Held: 0  
Final Orders as a Result of a Hearing: 0  
Orders Lifting Suspension: 0

**Non-Sufficient Funds (NSF)**

Orders Issued: 0  
Letters Issued: 0

**Other Non-Substantive Orders (e.g. Notice of Violation, Take Affirmative Action, Assessing Admin. Penalty, etc.)**

Other Non-Substantive Orders Issued: 30

**Recovery Fund**

Notices of Hearings Issued: 0

Hearings Held: 0

Final Orders as a Result of a Hearing: 1

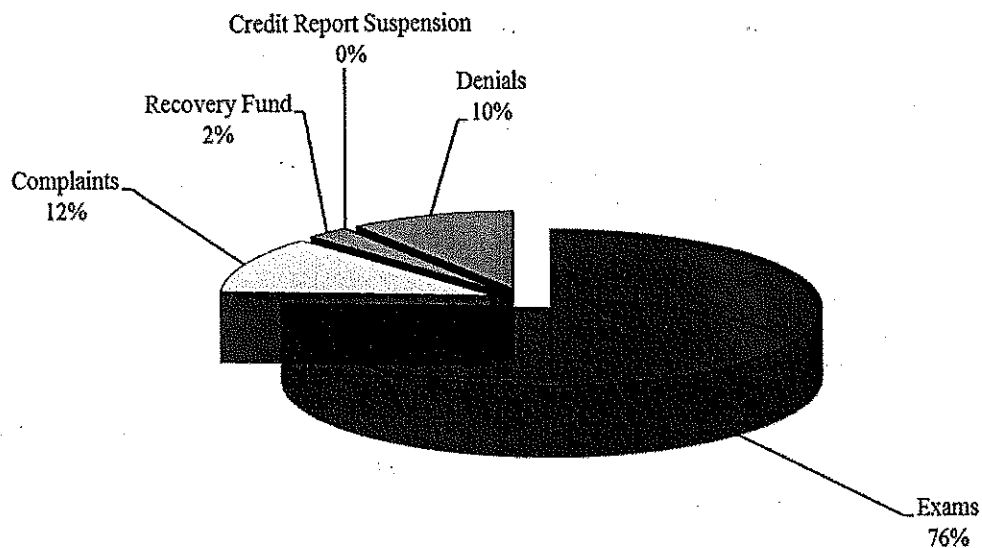
**Collection Cases Referred to the Attorney General**

Collection Cases Referred to the Attorney General: 3

There were no Recovery Fund claims paid during the period 2/01/2012 – 3/31/2012.

**Nature of Open Enforcement Cases**

(As of 03-31-2012)



Total Open Enforcement Cases as of 03/31/2012 = 121

Average Age of Open Enforcement Cases = 136 days

Oldest Open Enforcement Case = 481

## Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2012 Target	2012 Actual	2012 YTD	Percent of Annual Target
<b>Output Measures-Key</b>				
1-1-1 BANK EXAMINATION				
1. THRIFT EXAMINATION AND SUPERVISION				
Quarter 1	38	9	9	23.68%
Quarter 2	38	8	17	44.74% *
The improving condition of the industry has resulted in required onsite visitation and examination cycle being extended as prescribed by rule and statute.				
2-1-1 1. # NEW LIC/ORIGINATORS APPROVED				
Quarter 1	2,500	1,024	1,024	40.96% *
The Department continues to receive a high volume of license requests, but expects that the volume will begin to level out. Due to the high number of license requests and the processing of them, the Department has exceeded the goal for this quarter. The Department anticipates meeting and exceeding this goal for the fiscal year. (This quarterly number is subject to change.)				
Quarter 2	2,500	1,253	2,277	91.08% *
The Department continues to receive a high volume of license requests, but expects that the volume will begin to level out. Due to the high number of license requests and the processing of them, the Department has exceeded the goal for this quarter. The Department anticipates meeting and exceeding this goal for the fiscal year. (This quarterly number is subject to change.)				
2-1-2 MORTGAGE EXAMINATION				
1. NUMBER OF LICENSEES INSPECTED				
Quarter 1	3,600	829	829	23.03%
Quarter 2	3,600	786	1615	44.86% *
Some projected examinations scheduled for the 2nd quarter rolled over into the 3rd quarter.				
3-1-1 COMPLAINT AND INQUIRY PROCESS				
1. # COMPLAINTS PROCESSED				
Quarter 1	600	128	128	21.33%
Quarter 2	600	138	266	44.33% *
Fewer complaints were received than projected because of the size of the licensing population.				

\* Varies by 5% or more from target.

### Mortgage Industry Advisory Committee Minutes

**10:05 a.m., Wednesday, March 28, 2012** - The Mortgage Industry Advisory Committee (MIAC) conducted its regularly scheduled meeting, in the Finance Commission Building, 2601 N. Lamar Blvd., Austin, Texas.

Committee Members present were: Michael Morrow, Susan Stewart, Judy Belanger, Armando Barbosa, Lance Ludman and Alvin Collins. Savings and Mortgage Lending representatives present were Commissioner Douglas Foster, Director of Licensing Steven O'Shields, Deputy Commissioner/General Counsel Caroline Jones, Chief Examiner Tony Florence and Executive Assistant Michelle Harrington.

Also in attendance and introduced by Commissioner Foster, was Nathan McDonald an attorney in the SML Legal Division.

Commissioner Foster introduced and welcomed two new MIAC members, Armando Barbosa and Michael Morrow. Their three-year term with the committee began on February 1, 2012. Commissioner Foster offered a special recognition for Connie Hearn and Henry Lindner whose terms expired on January 31, 2012. At a special meeting in Dallas among her industry peers, Commissioner Foster presented Connie Hearn with a Resolution from Texas Department of Savings and Mortgage Lending thanking and commending her for her six years of service from February 1, 2006 through January 31, 2012 with honor and distinction. A Resolution for Henry Lindner will be presented to him in the near future also thanking and commending him for his years of service from February 1, 2006 through January 31, 2012 with honor and distinction.

Chief Mortgage Examiner Tony Florence discussed examination numbers. At present, 90% of Texas headquartered Mortgage Bankers have been examined and it is expected that all mortgage bankers will have been examined by December 31, 2012. He also shared that 84% of all open complaints received as of the end of the 2<sup>nd</sup> quarter are less than 90-days old. Another item of note was the visit of the Consumer Financial Protection Bureau in March, to review the Department's consumer complaint process. It was a good visit and they were appreciative of receiving the Department's policies and procedures.

Licensing Director Steven O'Shields presented a summary of licensing numbers. As of February 29, 2012, (mid-year), there have been 2,277 applications processed with an average of 470 new applications being received per month. As of this date there were 11,281 individual licensees and 2,833 licensed companies.

Commissioner Foster reviewed and discussed the draft format of the Strategic Plan which will be presented to the Finance Commission in June, 2012. Comments and suggestions made about the Department's Strategic Plan, by members and general public in attendance at the meeting, included the following:

- Very thorough, the agency serves as a model for other states and wishes that the agency could be "bottled" to be given to other states.
- Would not change anything, very well done.
- Suggestion to expand and comment on the cooperation between the agency and CFPB.
- Suggestion to expand the information regarding the call report and annual financial condition report, since that is a hot topic currently with the industry.
- This strategic plan serves as roadmap for the industry.
- Can the report not be shorter?

The overall consensus of the Department's Strategic Plan was that it was in good order and well prepared.

Deputy Commissioner/General Counsel Caroline Jones provided comments and information about the current Rule Review of Chapter 80 and Chapter 81 of 7 TAC and the intention of presenting them to the Finance Commission at the April 20<sup>th</sup> meeting. The Rule Review has determined that Chapter 80 and Chapter 81 do need to be re-adopted and will be presented as such to the Finance Commission. Additionally, both Chapter 80 and Chapter 81 will require mostly non-substantive changes (i.e. re-numbering, current terminology and duplicative statute language). To accomplish this



it will be necessary to repeal Chapter 80 and Chapter 81 as they are in 7 TAC, and at the same time present for publication New Chapter 80 and New Chapter 81 which will reflect all the changes.

There was some discussion of the committee members and one comment from the public. A request was made relating to termination of sponsorship as proposed in 81.20. The request was to require notification to the Commissioner be made through the NMLSR system rather than having to be accepted by the Commissioner. This change was met with full approval of the committee and Deputy Commissioner/General Counsel Jones.

Deputy Commissioner/General Counsel Jones presented Chapter 80 to the committee for their approval and vote. Member Judy Belanger made a motion that the committee approves the proposed rules, as amended at the meeting, of Chapter 80. This was seconded by Susan Stewart. The motion passed unanimously.


Deputy Commissioner/General Counsel Jones presented Chapter 81 to the committee for their approval and vote. Member Alvin Collins made a motion that the committee approves the proposed rules, as amended at the meeting, of Chapter 81. This was seconded by Lance Ludman. The motion passed unanimously.

Commissioner Foster shared that the State Regulatory Registry, the supervising board of the NMLSR is preparing and planning to implement a National Uniform State Test for all licensees. In preparation for the implementation of this test, the Department will seek legislative changes for additional pre-license education credits as part of the licensing approval process. This is still in the planning stages and if successful will be implemented in 2013.

Commissioner Foster then reviewed the remaining meeting dates for 2012. It was decided among the committee that since June 20 was after the Finance Commission June meeting, it would be canceled. The remaining meeting dates for 2012 are:

- September 26, 2012
- November 14, 2012

He thanked all those in attendance and adjourned the meeting at 12:18 p.m.

  
\_\_\_\_\_  
Douglas B. Foster, Commissioner

03/28/2012  
\_\_\_\_\_  
Date

**d. Other Issues**

None.

**3. Fiscal/Operations Activity:**

**a. Funding Status/Audits/Financial Reporting**

Funding Status/Budget – The second quarter of FY12 has been closed out. The financials are attached elsewhere in the package.

**b. Staffing**

As of March 31, 2012, the agency was staffed at 61 regular full time employees and 1 regular part-time employee with 65 FTEs available.

Currently, there are no job openings posted on the Department's website.

**c. Other Issues**

None

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4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC Chapter 80 (§§80.8 - 80.23 and §§80.301 - 80.307) relating to Texas residential mortgage loan originator regulations, under Rule Review.

**PURPOSE:** Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rule continue to exist.

Notice of the proposed review of 7 TAC Chapter 80 was published in the *Texas Register* as required on December 23, 2011 (36 Tex. Reg. 9017). The Department received no comments regarding the review.

The Department believes that the reasons for initially adopting the rules in 7 TAC Chapter 80 continue to exist and 7 TAC Chapter 80 should be readopted. Under rule review, the Department will also propose that the rules in 7 TAC Chapter 80 be repealed and adopted as new; the purpose of which is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

**RECOMMENDED ACTION:** The Department recommends that the Commission find the reasons for initially adopting the rules in 7 TAC Chapter 80 continue to exist, and the Commission readopt these rules.

**RECOMMENDED MOTION:** I move that we find the reasons for initially adopting the rules in 7 TAC Chapter 80 continue to exist, and those rules be readopted.

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### Adopted Rule Review

On behalf of the Finance Commission of Texas ("commission"), the Texas Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 80, Subchapters B-L (§§80.8 - 80.23 and §§80.301 - 80.307).

Notice of the review of Chapter 80 was published in the *Texas Register* as required on December 23, 2011 (36 Tex. Reg. 9017). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 80 continue to exist. Under rule review, the Department will also propose the repeal of Chapter 80 and the adoption of new Chapter 80; the purpose of which is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 80 in accordance with the requirements of the Government Code, §2001.039.

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5. Discussion of and Possible Vote on the Publication of the Proposed Repeal of 7 TAC Chapter 80 as found in §§80.8 - 80.23 and §§80.301 - 80.307.

**PURPOSE:** The purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice. To that end, the Department will also recommend the adoption of new 7 TAC Chapter 80.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the repeal of Chapter 80 for comment in the Texas Register.

**RECOMMENDED MOTION:** I move that we publish the repeal of Chapter 80 as found in §§80.8 - 80.23 and §§80.301 - 80.307.



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***TITLE 7. Banking and Securities***  
***Part 4, Texas Department of Savings and***  
***Mortgage Lending***  
***Chapter 80 Texas Residential Mortgage***  
***Loan Originator Regulations***  
***Proposed repeal of 7 TAC 80 (§§80.8 -***  
***80.23 and §§80.301 - 80.307)***

The repeal of 7 TAC Chapter 80 is proposed to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice. To that end, the Department will propose adoption of new 7 TAC Chapter 80, reflecting these changes.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705; or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The repeal of 7 TAC Chapter 80 is proposed under Texas Finance Code §§11.306 and 156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 156.

**~~Subchapter B Professional Conduct~~**

~~§80.8 Limitations on Charging of Fees~~

~~§80.9 Required Disclosures~~

~~§80.10 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings~~

~~§80.11 Advertising~~

**~~Subchapter C Administration and Records~~**

~~§80.12 License Record Changes~~

~~§80.13 Books and Records~~

~~§80.14 Education Program~~

**~~Subchapter D Complaints and Investigations~~**

~~§80.15 Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions~~

**~~Subchapter E Hearings and Appeals~~**

~~§80.16 Hearings and appeals~~

**~~Subchapter F Interpretations~~**

~~§80.17 Interpretations~~

**~~Subchapter G Enforcement of Liens~~**

~~§80.18 Enforceability of Liens~~

**~~Subchapter H Savings Clause~~**

~~§80.19 Savings Clause~~

**~~Subchapter I Inspections and Investigations~~**

~~§80.20 Examinations~~

~~§80.21 Investigations~~

**~~Subchapter J Forms~~**

~~§80.22 Loan Status Forms~~

**~~Subchapter K Mortgage Call Reports~~**

~~§80.23 Mortgage Call Reports~~

**~~Subchapter L Licensing~~**

~~§80.301 Scope~~

~~§80.302 Definitions~~

~~§80.303 Licensing General~~

~~§80.304 Qualifications for Obtaining Licenses~~

~~§80.305 Renewals~~

~~§80.306 Sponsorship and Termination Thereof~~

~~§80.307. Background Checks~~

**Certification**

The agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 20, 2012.

Caroline C. Jones  
Deputy Commissioner/General Counsel  
Texas Department of Savings and Mortgage  
Lending

6. Discussion of and Possible Vote to Take Action on the publication for comment of new 7 TAC Chapter 80 concerning Subchapter A General Provisions, including §80.1, concerning Scope; §80.2, concerning Definitions; §80.3, concerning Interpretations; §80.4, concerning Enforceability of Liens; and §80.5, concerning Savings Clause; Subchapter B, concerning Licensing, including §80.100, concerning Licensing-General; §80.101, concerning Education Program; §80.102, concerning Sponsorship and Termination Thereof; §80.103, concerning License Record Changes; §80.104, concerning Background Checks; §80.105, concerning Request for Criminal History Eligibility Determination; §80.106, concerning Renewals; and §80.107, concerning Fees; Subchapter C, concerning Duties and Responsibilities, including, §80.200, concerning Required Disclosures; §80.201, concerning Loan Status Forms; §80.202, concerning Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §80.203, concerning Advertising; §80.204, concerning Books and Records; and §80.205, concerning Mortgage Call Reports; and Subchapter D, concerning Compliance and Enforcement, including §80.300, concerning Examinations; §80.301, concerning Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions; and §80.302, concerning Hearings and Appeals.

**PURPOSE:** The addition of the rules under new Chapter 80 is proposed to allow the Department to reorganize the rules, clarify existing rules and practices, and use current terminology.

**RECOMMENDED ACTION:** The Department recommends the Commission approve publication of new 7 TAC Chapter 80, Subchapter A, §§80.1-80.5; Subchapter B, §§80.100-80.107; Subchapter C, §§80.200-80.205; and Subchapter D, §§80.300-80.302, for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve publication of new 7 TAC Chapter 80, Subchapter A, §§80.1-80.5; Subchapter B, §§80.100-80.107; Subchapter C, §§80.200-80.205; and Subchapter D, §§80.300-80.302, for comment in the *Texas Register*.

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**Title 7. Banking and Securities**  
**Part 4. Texas Department of Savings and Mortgage Lending**  
**Chapter 80 Texas Residential Mortgage Loan Originator Regulations**  
**Proposed new 7 TAC Chapter 80 Texas Residential Mortgage Loan Originator Regulations as found in the following proposed new sections: Subchapter A. §80.1 - §80.5; Subchapter B. §80.100 - §80.107; Subchapter C. §80.200 - §80.205; and Subchapter D. §80.300 - §80.302.**

The Finance Commission of Texas (the Commission) proposes new 7 TAC §80 concerning Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing.

The addition of the rules under new Chapter 80 is proposed to allow the department the ability to reorganize the rules, clarify existing rules and practices, and use current terminology.

The department proposes renumbering of the rules for a more orderly structure and to allow room in the Chapter for future rules. The department proposes new subchapters to aid in this new structuring. Additionally, the department proposes combining some rules to provide clarification of requirements and current practices as well as to provide a better order of the rules.

Rules which recite verbatim statutory language have been re-written to refer to statute rather than duplicating language. The substance of the text of the proposed new rules is identical or substantially similar to that found in 7 TAC Chapter 80 which has been proposed for repeal, except for the amendments specifically described below.

The proposed new §80.2, concerning Definitions, adds a definition for "Control Person" and "Qualifying Individual". The definitions are consistent with the Nationwide

Mortgage Licensing System and with current department practice.

The proposed new §80.203, concerning Advertising, contains a substantive amendment. Currently an advertisement, caused to be published by the originator, requires that the originator's name or the company's name to be disclosed within the advertisement. The Department is proposing to amend the rule by adding an "and" which would require that both names, originator and company, are disclosed in the advertisement. This amendment would insure that the consumer would know the originator and company with whom they are conducting business.

The proposed new §80.205, concerning Mortgage Call Reports, provides clarification of the requirement relating to the filing of mortgage call reports and statements of condition. Although the language is new and may be considered a substantive change, it does nothing more than define the requirements and deadlines for each type of report. There is no change to existing practice. This language captures the requirements recently imposed on both the state and regulated entities by Nationwide Mortgage Licensing System.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Foster has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed addition of new Chapter 80 will be that the reorganization of the department's rules clarify the rules and allow for additional rules to be implemented. There will be no effect on individuals required to

comply with the addition of the new Chapter 80 as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new 7 TAC Chapter 80 may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by e-mail to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The new rules are proposed under Texas Finance Code §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 156.

The statutory provisions affected by the proposed new rules are contained in Texas Finance Code, Chapter 156.

**Title 7. Banking and Securities**  
**Part 4. Texas Department of Savings and Mortgage Lending**  
**Chapter 80 Texas Residential Mortgage Loan Originator Regulations**

**Subchapter A General Provisions**

**§80.1 Scope**

This chapter governs the licensing, registration and conduct of Residential Mortgage Loan Originators, Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies, and Independent Contractor Loan Processors and Underwriters under Finance Code, Chapter 156 and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used

interchangeably.

**§80.2 Definitions**

As used in this chapter, the following terms have the meanings indicated:

(1) "Branch Office" means any office that is separate and distinct from the company's headquarters location, whether located in Texas or not, which conducts mortgage business on residential real estate located in the state of Texas.

(2) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(3) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, Chapter 156.002.

(4) "Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or executive officer; (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities; (iii) in the case of an LLC, managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company.

(5) "Dwelling" has the meaning assigned by §103(v) of the Truth in Lending Act (15

U.S.C. §1602(v)).

(6) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is, is being or is to be constructed or situated.

(7) "Originator" means, for purposes of this chapter, a residential mortgage loan originator, as that term is defined in Finance Code, §180.002.

(8) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(9) "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct

regulated activities, and is sponsored by the company for which they are the qualifying individual.

(10) "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

### **§80.3 Interpretations**

In order to provide clarification as to how Finance Code, Chapter 156 will be construed and implemented the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 156 and these regulations.

### **§80.4 Enforceability of Liens**

A violation of this chapter shall not render an otherwise lawfully taken lien unenforceable.

### **§80.5 Savings Clause**

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder hereof, all of which shall remain in full force and effect.

## **Subchapter B Licensing**

### **§80.100 Licensing – General**

(a) A person is required to be licensed under Finance Code, Chapter 156 if:

(1) The person engages in the business of



residential mortgage loan origination on real property located in the state of Texas.

(2) An individual represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this subparagraph;

(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(5) Issues or signs a prequalification letter or preapproval letter; or

(6) The person is a loan processor or underwriter who is an independent contractor.

(b) Applications for a company or an originator license must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(c) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

(d) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(e) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(f) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(g) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or

advisable to determine that the requirements of Finance Code, Chapter 156 have been met.

#### **§80.101 Education Program**

Pre-licensing and continuing education courses required under Finance Code, Chapter 156 and Chapter 180 shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

#### **§80.102 Sponsorship and Termination Thereof**

(a) An originator's license must be sponsored in the Nationwide Mortgage Licensing System and Registry by any company employing the originator.

(b) By sponsoring an originator, a company acknowledges and accepts responsibility for the actions of the originator pursuant to Finance Code, Chapter 156.

(c) Sponsorship may be removed by either the sponsoring company or the sponsored originator. If sponsorship is terminated the party terminating the sponsorship shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry that the sponsorship has terminated.

#### **§80.103 License Record Changes**

(a) Each originator's application for a license under Finance Code, Chapter 156 requires the applicant to indicate the location(s) at which he or she proposes to conduct licensed activity. Proper sponsorship and disclosure of each location is required on their Nationwide Mortgage Licensing System and Registry record.

(b) A licensee shall notify the Commissioner by filing a license amendment through the Nationwide Mortgage Licensing System and Registry of the following"

(1) any change of address;

(2) personal name change; or

(3) a new, or changed company, organization, or assumed name.

#### **§80.104 Background Checks**

(a) In connection with each application for an originator's license, the applicant shall provide authorization and fingerprints as prescribed by the Nationwide Mortgage Licensing System and Registry necessary to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) In connection with each application for an originator's license, the Commissioner may conduct a criminal background history check through the Department of Public Safety.

(c) In connection with each application for the issuance of an originator's license, the applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain an independent credit report from a consumer reporting agency.

(d) In connection with each application for the issuance of an originator's license, the applicant shall provide to the Commissioner and the Nationwide Mortgage Licensing System and Registry information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

#### **§80.105 Request for Criminal History Eligibility Determination**

An individual considering applying for an originator license may request a criminal history evaluation letter regarding the person's eligibility for a license, as defined in Occupations Code, Chapter 53, Subchapter D. The request must be made on a form promulgated by the department and include all

pertinent court documentation including certified copies of all judgments and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

(1) Investigate the information provided by the individual to determine if there are grounds for ineligibility; and

(2) Notify the individual as to the department's determination within 90 days of receipt of the individual's request.

#### **§80.106 Renewals**

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee;

(2) determination that the applicant continues to meet the minimum requirements for license issuance; and

(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.

(b) Renewal of a license may be denied for reasons provided in Finance Code, §156.208.

(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.

(d) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance

Code, Chapter 156 as is deemed necessary or advisable to determine compliance with the requirements of Finance Code, Chapter 156.

#### **§80.107 Fees**

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 156. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

#### **Subchapter C Duties and Responsibilities**

##### **§80.200 Required Disclosures**

(a) An originator shall include the following notice, Figure 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure 7 TAC §80.200(a)

(b) At each physical office, and on its website, a company or an originator shall conspicuously post the following notice:

"CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A COMPANY OR A RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE

AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV."

(c) A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.

#### **§80.201 Loan Status Forms**

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

#### **Figure 7 TAC §80.201(a)**

(b) When provided to a mortgage applicant, written notification of loan application approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure 7 TAC §80.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. Either form may be modified by adding the additional information permitted by subsection (a)(1) – (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations.

#### **Figure 7 TAC §80.201(b)**

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a (l).

#### **§80.202 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings**

(a) No company or originator may:

(1) knowingly misrepresent his or her relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a

residential mortgage loan:

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the company or originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statute or regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §156.303(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, 12 U.S.C. Chapter 2600;

(B) Regulation X, 24 C.F.R. Part 3500;

(C) Consumer Credit Protection Act, 15 U.S.C. Chapter 1600 (Truth in Lending Act);

(D) Regulation Z, 12 C.F.R. Part 226;

(E) Equal Credit Opportunity Act, 15 U.S.C. §1691;

(F) Regulation B, 12 C.F.R. Part 202; and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the company or originator is a "discount point" unless the loan closes and:

(A) The company or originator is the lender in the transaction. For purposes

of this subsection, the company or originator is deemed to be the lender if the company or originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) The company or originator, is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the company or originator has remitted to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

(c) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:

(1) The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.

(d) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

### **§80.203 Advertising**

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure

requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

(2) Except as provided in subsection (c) of this section, if the person who caused the advertisement to be published is an originator the advertisement shall contain:

(A) the name of the originator followed by the phrase "Residential Mortgage Loan Originator";

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number;

(C) the name of the company, as designated in the records of the Commissioner as of the date of the advertisement, through or for whom the originator conducts the advertised mortgage origination activities; and

(D) the company's physical office or branch office street address in Texas;

(3) An advertisement shall not make any statement or omit to make any statement the result of which is to present a misleading or deceptive impression to consumers.

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the company or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

#### **§80.204 Books and Records**

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each company or originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For

each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; and

(F) a copy of the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet; if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a

minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage brokerage business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all company employees, independent contractors and all others compensated by such originator in connection with the mortgage lending

business:

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) A company and/or originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A company and/or originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and



shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records.

(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

#### **§80.205. Mortgage Call Reports**

##### **(a) Call Report**

(1) A company shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

##### **(b) Statement of Condition Report**

(1) A company shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a company, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report can result in an administrative penalty for each missed or late filing.

#### **Subchapter D Compliance and Enforcement**

#### **§80.300 Examinations**

(a) The Commissioner, operating through the department staff and such others as the Commissioner may from time to time designate, will conduct periodic examinations of a company or an originator as the Commissioner deems necessary.

(b) Except when the department determines that giving advance notice would impair the examination, the department will give the qualifying individual of the company advance notice of each examination. Such notice will be sent to the qualifying individual's address of record or e-mail address on file with the department and will specify the date on which the department's examiners are scheduled to begin the examination. Failure of the qualifying individual to actually receive the notice will not be grounds for delay or

postponement of the examination. The notice will include a list of the documents and records the qualifying individual should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §80.204 of this chapter;

(4) Legal and regulatory requirements applicable to licensees are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 156.

(d) The examiner will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the company's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiner may require a company or an originator at their own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(f) The workpapers, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted

under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure of a company or an originator to cooperate with an examination or failure to grant the examiner access to books, records, documents, operations, and facilities will subject the company or originator to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(h) When the department must travel out-of-state to conduct an examination of a company or an originator because the required records are maintained at a location outside of the state, the company or originator will be required to reimburse the department for the actual cost the department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and facsimile communications, courier service and any other reasonably related costs.

**§80.301 Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions**

(a) Upon receipt of a written complaint alleging acts or omissions of a person as defined in Finance Code, §180.002(14) required to be licensed under Finance Code, Chapter 156, the Commissioner or the Commissioner's designee will:

(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation;

(A) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The

investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(i) review of documentary evidence;

(ii) interviews with complainants, licensees, and third parties;

(iii) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(iv) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information;

(B) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file;

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or these regulations, the Commissioner shall consider such factors as required by Finance Code, §156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain

a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

### **§80.302 Hearings and Appeals**

(a) Hearings are to be conducted in accordance with 7 TAC, Chapter 9, including, but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in 7 TAC, Chapter 9, are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final and cannot be appealed with no further action by the Commissioner.

### **Certification**

The agency hereby certifies that the new rules have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 20, 2012

Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage  
Lending

**TEXAS MORTGAGE COMPANY DISCLOSURE**

**Residential Mortgage Loan Originator:** \_\_\_\_\_

**NMLS ID:** \_\_\_\_\_

*Check ALL that apply*

Duties and Nature of Relationship

☐ We will submit your loan application to a participating lender which we may from time to time contract upon such terms as you may request or a lender may require. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent

☐ We will make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

☐ We will be acting as follows:

How we will be compensated

☐ The retail price we offer you - your interest rate, total points, and fees - will include our compensation. In some cases we may be paid all of our compensation by you or by the lender or investor

☐ Our pricing for your loan is based upon:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A COMPANY OR A RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENTS WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.

Applicant(s)

Residential Mortgage Loan Originator

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Figure: 7 TAC §80.201(a)

**Form A**  
**Conditional Qualification Letter**

**Date:**

**Prospective Applicant:**

**Residential Mortgage Loan Originator:**

License Number \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

**Loan (describe as follows):**

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Residential mortgage loan originator ☐ has ☐ has not received a signed application for the Loan from the prospective applicant

Residential mortgage loan originator ☐ has ☐ has not reviewed the prospective applicant's credit report

Residential mortgage loan originator ☐ has ☐ has not reviewed the prospective applicant's credit score

Residential mortgage loan originator has reviewed the following additional items (list):

The prospective applicant has provided the residential mortgage loan originator verbally in writing with information about the prospective applicant:

Income    Yes    No    Not applicable

Available cash Yes No Not applicable for down payment and payment of closing costs

Debts Yes No Not applicable

Assets Yes No Not applicable

Based on the information that the prospective applicant has provided to the residential mortgage loan originator as described above, the residential mortgage loan originator has determined that the prospective applicant is eligible and qualified to meet the financial requirements of the loan.

**This is not an approval for the Loan.** Approval of the Loan requires: (1) the residential mortgage loan originator to verify the information that the prospective applicant has provided; (2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes; (3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the loan, as described, to remain available in the market; (5) the prospective applicant to execute loan documents the lender requires, and (6) the following additional items (list):

Residential Mortgage Loan Originator

Figure: 7 TAC §80.201(b)

**Form B**  
**Conditional Approval Letter**

**Date:**

**Applicant:**

Residential mortgage loan originator: License Number

Address

Phone #

**Loan (describe as follows):**

Loan Amount:

Interest Rate:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

Secondary financing terms (if applicable):

Optional Information: Points: Origination: Discount:

Commitment: Other (describe):

**Subject Property:**

Residential mortgage loan originator: has received a signed application from the applicant.

Residential mortgage loan originator: has:

Reviewed applicant's Yes Not applicable credit report and credit score



Verified applicant's Yes Not applicable income

Verified applicant's Yes Not applicable available cash for down payment and closing costs

Reviewed applicant's Yes Not applicable debts and other assets

Applicant is approved for the loan provided that the applicant's creditworthiness and financial position do not materially change prior to closing and provided that:

1. The subject property is appraised for an amount not less than \$
2. The lender does not object to encumbrances to title shown in the title commitment or survey;
3. The subject property's condition meets lender's requirements
4. The subject property is insured in accordance with lender's requirements;
5. The applicant executes the loan documents lender requires; and
6. The following additional conditions are complied with (list):

This conditional approval expires on

Residential Mortgage Loan Originator:

7. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC Chapter 81 (§§81.1 - 81.20) relating to mortgage banker registration and residential mortgage loan officer licensing, under Rule Review.

**PURPOSE:** Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rule continue to exist.

Notice of the proposed review of 7 TAC Chapter 81 was published in the Texas Register as required on December 23, 2011 (36 Tex. Reg. 9017). The Department received no comments regarding the review.

The Department believes that the reasons for initially adopting the rules in 7 TAC Chapter 81 continue to exist and 7 TAC Chapter 81 should be readopted. Under Rule Review, the Department will also propose that the rules in 7 TAC Chapter 81 be repealed and adopted as new; the purpose of which is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

**RECOMMENDED ACTION:** The Department recommends that the Commission find the reasons for initially adopting the rules in 7 TAC Chapter 81 continue to exist, and the Commission readopt these rules.

**RECOMMENDED MOTION:** I move that we find the reasons for initially adopting the rules in 7 TAC Chapter 81 continue to exist, and those rules be readopted.

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### Adopted Rule Review

On behalf of the Finance Commission of Texas ("commission"), the Texas Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 81, Subchapters A-L (§§81.1-80.20).

Notice of the review of Chapter 81 was published in the *Texas Register* as required on December 23, 2011 (36 Tex. Reg. 9017). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 81 continue to exist. Under rule review, the Department will also propose the repeal of Chapter 81 and the adoption of new Chapter 81; the purpose of which is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 81 in accordance with the requirements of the Government Code, §2001.039.

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8. Discussion of and Possible Vote on the Publication of the Proposed Repeal of 7 TAC Chapter 81 as found in §§81.1 - 81.20.

**PURPOSE:** The purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice. To that end, the Department will also recommend the adoption of new 7 TAC Chapter 81.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the repeal of Chapter 81 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish the repeal of Chapter 81 as found in §§81.1 - 81.20.

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***TITLE 7. Banking and Securities***  
***Part 4, Texas Department of Savings and***  
***Mortgage Lending***  
***Chapter 81 Mortgage Banker Registration***  
***and Residential Mortgage Loan Officer***  
***Licensing***  
***Proposed repeal of 7 TAC Chapter 81***  
***(§§81.1 - 81.20)***

The repeal of 7 TAC Chapter 81 is proposed to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice. To that end, the Department will propose adoption of new 7 TAC Chapter 81, reflecting these changes.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705; or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The repeal of 7 TAC Chapter 81 is proposed under Texas Finance Code §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 157.

***Subchapter A Licensing***

- §81.1 Definitions
- §81.2 Loan Status Forms
- §81.3 Licensing General
- §81.4 Qualifications for Obtaining Licenses
- §81.5 Renewals
- §81.6 Criminal History

***Subchapter B Professional Conduct***

- §81.7 Required Disclosures
- §81.8 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings
- §81.9 Advertising

***Subchapter C Administration and Records***

- §81.10 Books and Records

***Subchapter D Complaints and Investigations***

- §81.11 Complaints and Investigations

***Subchapter E Examinations and Investigations***

- §81.12 Examinations
- §81.13 Investigations

***Subchapter F Hearings and Appeals***

- §81.14 Hearings and Appeals

***Subchapter G Mortgage Call Reports***

- §81.15 Mortgage Call Reports

***Subchapter H Recovery Fund***

- §81.16 Recovery Fund

***Subchapter I Interpretations***

- §81.17 Interpretations

***Subchapter J Enforcement of Liens***

- §81.18 Enforceability of Liens

***Subchapter K Savings Clause***

- §81.19 Savings Clause

***Subchapter L Sponsorship and Termination Thereof***

- §81.20 Sponsorship and Termination Thereof



**Certification**

The agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 20, 2012.

Caroline C. Jones  
Deputy Commissioner/General Counsel  
Texas Department of Savings and Mortgage  
Lending

9. Discussion of and Possible Vote to Take Action on the publication for comment of new 7 TAC Chapter 81 concerning Subchapter A General Provisions, including §81.1, concerning Scope; §81.2, concerning Definitions; §81.3, concerning Interpretations; §81.4, concerning Enforceability of Liens; and §81.5, concerning Savings Clause; Subchapter B, concerning Licensing, including §81.100, concerning Licensing-General; §81.101, concerning, Sponsorship and Termination Thereof; §81.102, concerning Recovery Fund; §81.103, concerning Request for Criminal History Eligibility Determination; §81.104, concerning Renewals; and §81.105, concerning Fees; Subchapter C, concerning Duties and Responsibilities, including, §81.200, concerning Required Disclosures; §81.201, concerning Loan Status Forms; §81.202, concerning Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings; §81.203, concerning Advertising; §81.204, concerning Books and Records; and §81.205, concerning Mortgage Call Reports; and Subchapter D, concerning Compliance and Enforcement, including §81.300, concerning Examinations; §81.301, concerning Complaints and Investigations; and §81.302, concerning Hearings and Appeals.

**PURPOSE:** The addition of the rules under new Chapter 81 is proposed to allow the Department to reorganize the rules, clarify existing rules and practices, and use current terminology.

**RECOMMENDED ACTION:** The Department recommends the Commission approve publication of new 7 TAC Chapter 81, Subchapter A, §§81.1- 81.5; Subchapter B, §§81.100-81.105; Subchapter C, §§81.200-81.205; and Subchapter D, §§81.300-81.302, for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve publication of new 7 TAC Chapter 81, Subchapter A, §§81.1- 81.5; Subchapter B, §§81.100-81.105; Subchapter C, §§81.200-81.205; and Subchapter D, §§81.300-81.302, for comment in the *Texas Register*.

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**Title 7. Banking and Securities**

**Part 4. Texas Department of Savings and Mortgage Lending**

**Chapter 81 Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing**

**Proposed new 7 TAC Chapter 81 Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing as found in the following proposed new sections: Subchapter A. §81.1 - §81.5; Subchapter B. §81.100 - §81.105; Subchapter C. §81.200 - §81.205; and Subchapter D. §81.300 - §81.302.**

The Finance Commission of Texas (the Commission) proposes new 7 TAC Chapter 81 concerning Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing.

The addition of the rules under new Chapter 81 is proposed to allow the department the ability to reorganize the rules, clarify existing rules and practices, and use current terminology.

The department proposes renumbering of the rules for a more orderly structure and to allow room in the Chapter for future rules. The department proposes new subchapters to aid in this new structuring. Additionally, the department proposes combining some rules to provide clarification of requirements and current practices as well as to provide a better order of the rules.

Rules which recite verbatim statutory language have been re-written to refer to statute rather than duplicating language. The substance of the text of the proposed new rules is identical or substantially similar to that found in 7 TAC Chapter 81 which has been proposed for repeal, except for the amendments specifically described below.

The proposed new §81.302(a), concerning Hearings and Appeals, sets forth the

jurisdiction for appeals of decisions of the commissioner as State District Court, Travis County, Texas. This language is new to the rules; however, pursuant to the Government Code, Chapter 2001, this is the court with jurisdiction regardless of whether it is stated in the rule. The proposed new §81.302(b) and §81.302(c) add clarification to the due process to be followed when an appeal is filed.

The proposed new §81.205, concerning Mortgage Call Reports, provides clarification of the requirement relating to the filing of mortgage call reports and statements of condition. Although the language is new and may be considered a substantive change, it does nothing more than define the requirements and deadlines for each type of report. There is no change to existing practice. This language captures the requirements recently imposed on both the state and regulated entities by Nationwide Mortgage Licensing System.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Foster has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed addition of new Chapter 81 will be that the reorganization of the department's rules clarify the rules and allow for additional rules to be implemented. There will be no effect on individuals required to comply with the addition of the new Chapter 81 as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new 7 TAC Chapter 81 may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage

Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by e-mail to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The new rules are proposed under Texas Finance Code §157.011, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 157.

## **Title 7. Banking and Securities**

### **Part 4. Texas Department of Savings and Mortgage Lending**

#### **Chapter 81 Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing**

##### **Subchapter A General Provisions**

##### **§81.1 Scope**

This chapter governs the licensing, registration and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably.

##### **§81.2 Definitions**

(1) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance

Code, Chapter 157.

(2) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.

(5) "Originator" means, for purposes of this chapter, a Residential Mortgage Loan Originator, as that term is defined in Finance Code, §180.002.

(6) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a originator need not be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(7) "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

### **§81.3 Interpretations**

In order to provide clarification as to how Finance Code, Chapter 157 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 157 and these regulations.

### **§81.4 Enforceability of Liens**

A violation of this chapter shall not render an otherwise lawfully taken lien unenforceable.

### **§81.5 Savings Clause**

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder thereof, all of which shall remain in full force and effect.

## **Subchapter B Licensing**

### **§81.100 Licensing – General**

(a) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(b) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship.

Upon submission and approval of a sponsorship, the license may be changed to active status.

(c) An originator, through written notice to the department, may place his or her license in an inactive status at any time during the license term. While in an inactive status an originator must not engage in the origination of residential mortgage loans as defined in §81.2(7) of this chapter, and must continue to meet the statutory requirements of the license. Upon submission and approval of a sponsorship, the license may be changed to an active status.

(d) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to Finance Code, Chapter 157 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 157 have been met and maintained.

(e) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(f) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

#### **§81.101 Sponsorship and Termination Thereof**

(a) An originator's license must be sponsored in the Nationwide Mortgage Licensing System and Registry by a mortgage banker.

(b) Sponsorship may be removed by either the sponsoring mortgage banker or the originator. If sponsorship is terminated, the party terminating the sponsorship shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry that the sponsorship has been terminated.

#### **§81.102 Recovery Fund**

(a) A designated portion of the originator's license and renewal fees, as determined by the Commissioner, shall be allocated to the Recovery Fund for the purpose of compliance with Finance Code, Chapter 180.

(b) Administration of the Recovery Fund and any claims to the Recovery Fund against an originator shall be in accordance with the provisions of Finance Code, Chapter 156, Subchapter F.

#### **§81.103 Request for Criminal History Eligibility Determination**

An individual considering applying for an originator license may request a criminal history evaluation letter regarding the person's eligibility for a license, as defined in Occupations Code, Chapter 53, Subchapter D. The request must be made on a form promulgated by the department and include all pertinent court documentation including certified copies of all judgments and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

(1) Investigate the information provided by the individual to determine if there are grounds for ineligibility; and

(2) Notify the individual as to the department's determination within 90 days of receipt of the individual's request.

#### **§81.104 Renewals**

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee;

(2) determination that the applicant continues to meet the minimum requirements for license issuance; and

(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.

(b) Renewal of a license may be denied for reasons provided in Finance Code, §157.015.

(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.

#### **§81.105 Fees**

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 157. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

### **Subchapter C Duties and Responsibilities**

#### **§81.200 Required Disclosures**

(a) An originator shall include the following notice, Figure 7 TAC §81.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure 7 TAC §81.200(a)

(b) A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section.

(c) At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice:

"CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE



FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV."

(d) A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the website.

#### **§81.201 Loan Status Forms**

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

#### **Figure 7 TAC §81.201(a)**

(b) When provided to a mortgage applicant, written notification of loan application approval on the basis of credit worthiness, but

not on the basis of collateral, shall include the information in Form B, Figure 7 TAC §81.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. Either form may be modified by adding the additional information permitted by subsection (a)(1) – (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations.

#### **Figure 7 TAC §81.201(b)**

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a (l).

#### **§81.202 Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings**

(a) No originator may:

- (1) knowingly misrepresent his or her relationship to a residential mortgage loan applicant or any other party to an actual or proposed residential mortgage loan transaction;
- (2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a residential mortgage loan applicant's applying for or obtaining a residential mortgage loan;
- (3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;
- (4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by

that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statute or regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final

court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 157 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, 12 U.S.C. Chapter 2600;

(B) Regulation X, 24 C.F.R. Part 3500;

(C) Consumer Credit Protection Act, 15 U.S.C. Chapter 1600 (Truth in Lending Act);

(D) Regulation Z, 12 C.F.R. Part 226;

(E) Equal Credit Opportunity Act, 15 U.S.C. §1691;

(F) Regulation B, 12 C.F.R. Part 202; and

(G) Texas Constitution, Article XVI, §50.

(c) A mortgage banker or originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a mortgage loan:

(1) The mortgage banker or originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage

banker knew or should have known of the transaction; or

(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator.

(d) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

### **§81.203 Advertising**

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

(2) Except as provided in subsection (c) of this section, the advertisement shall contain:

(A) the name of the originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement;

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number; and

(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department.

(3) An advertisement shall not make or omit any statement the result of which is to present a misleading or deceptive impression to consumers; and

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage banker or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution

to consumers.

#### **§81.204 Books and Records**

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

(A) a copy of the initial signed and dated mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Finance Code, §157.007 and §81.200(a) of this chapter;

(D) a copy of each item of

correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition; and

(E) a copy of the notice to applicants required by Finance Code, §343.105.

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable.

(2) Mortgage Transaction Log. A residential mortgage transaction log, maintained on a current basis, which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred, setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a residential mortgage loan applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, delegations of underwriting authority, price agreements for goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by

any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) Each originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring mortgage banker maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records shall remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to his or her former originator copies

of records relating to residential mortgage loans handled by such former originator.

(h) Upon the termination of operations as a mortgage banker or an originator, the mortgage banker or originator shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker, the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

### **§81.205 Mortgage Call Reports**

#### **(a) Call Report**

(1) A mortgage banker shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

#### **(b) Statement of Condition Report**

(1) A mortgage banker shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

#### **(c) Submission of a call report or statement of**

condition report, by a mortgage banker, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report can result in an administrative penalty for each missed or late filing.

### **Subchapter D Compliance and Enforcement**

### **§81.300 Examinations**

(a) The Commissioner, operating through the department staff and such others as the Commissioner may, from time to time, designate will conduct periodic examinations of an originator sponsored by mortgage bankers as the Commissioner deems necessary.

(b) Except when the department determines that giving advance notice would impair the examination, the department will give the mortgage banker advance notice of each examination. Such notice will be sent to the contact person's address of record or e-mail address on file with the department and will specify the date on which the department's examiners will commence the examination. Failure of the mortgage banker to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the mortgage banker should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 157 and this chapter. The examination will specifically address whether:

(1) All persons conducting residential mortgage loan activity are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §81.204 of this chapter;

(4) Legal and regulatory requirements applicable to originators or the originator's residential mortgage business are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 157.

(d) The examiner will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the originator's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiner may require an originator, at his or her own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(f) The workpapers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure of an originator to cooperate with the examination or failure to grant the examiner access to books, records, documents, operations, and facilities will subject the originator and any mortgage banker employer to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(h) When the department must travel out-of-state to conduct an examination of an originator, because that originator maintains required records at a location outside of the state, the originator will be required to reimburse the department for the actual cost the department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and facsimile communications, courier service and any other reasonably related costs.

### **§81.301 Complaints and Investigations**

(a) Upon receipt of a written complaint alleging acts or omissions of a person as defined under Finance Code, §180.002(14) required to be licensed or a mortgage banker required to be registered under Finance Code, Chapter 157, the Commissioner or the Commissioner's designee will:

(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:

(A) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(i) review of documentary evidence;

(ii) interviews with complainants, licensees, and third parties;

(iii) obtaining reports, advice, and other comments and assistance of

other state and/or federal regulatory, enforcement, or oversight bodies; and

(iv) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information;

(B) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file;

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 157 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 157.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157.

### **§81.302 Hearings and Appeals**

(a) Hearings are to be conducted in accordance with 7 TAC, Chapter 9, including,

but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in 7 TAC, Chapter 9, are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final and cannot be appealed with no further action by the Commissioner.

### **Certification**

The agency hereby certifies that the new rules have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 20, 2012

Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending



Figure: 7 TAC §81.200(a)

**TEXAS MORTGAGE BANKER DISCLOSURE**

**Residential Mortgage Loan Originator:** \_\_\_\_\_

**NMLS ID:** \_\_\_\_\_

Pursuant to the requirements of Section 157.007 of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, Chapter 157, Texas Finance Code, you are hereby notified of the following:

**CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.**

**THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.**

**THIS DISCLOSURE WAS DELIVERED TO THE CONSUMER:**

- ☐ IN PERSON  
☐ BY FAX  
☐ BY E-MAIL  
☐ OTHER \_\_\_\_\_

**DATE DELIVERY INITIATED:** \_\_\_\_\_

Figure: 7 TAC §81.201(a)

**Form A**  
**Conditional Qualification Letter**

**Date:**

**Prospective Applicant:**

**Mortgage Banker:**

Registration Number \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

**Loan (describe as follows):**

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage banker \_\_\_ has \_\_\_ has not received a signed application for the loan from the prospective applicant

Mortgage banker \_\_\_ has \_\_\_ has not reviewed the prospective applicant's credit report

Mortgage banker \_\_\_ has \_\_\_ has not reviewed the prospective applicant's credit score

Mortgage banker has reviewed the following additional items (list):

The prospective applicant has provided the mortgage banker \_\_\_ verbally \_\_\_ in writing with the following information about the prospective applicant:

Income \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Available cash for down payment and payment of closing costs \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Debts \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Other Assets \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Based on the information that the prospective applicant has provided to the mortgage banker, as described above, the mortgage banker has determined that the prospective applicant is eligible and qualified to meet the financial requirements of the Loan.

**This is not an approval for the loan.** Approval of the loan requires: (1) the mortgage banker to verify the information that the prospective applicant has provided; (2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes; (3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the loan type and terms, as described, to remain available in the market; (5) the prospective applicant to execute loan documents the lender requires, and (6) the following additional items (list):

Mortgage Banker or Loan Officer

**Form B**  
**Conditional Approval Letter**

**Date:**

**Applicant:**

**Mortgage Banker:**

Registration Number \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

**Loan (describe as follows):**

1. Loan Amount:

2. Interest Rate:

3. Interest Rate Lock Expires (if applicable):

4. Maximum Loan-to-Value Ratio:

5. Loan Type and Program:

Secondary financing terms (if applicable):

Optional Information: Points:

Origination:

Discount:

Commitment:

Other (describe):

**Subject Property:**

Mortgage banker has received a signed application from the applicant.

Mortgage banker has:

Reviewed applicant credit report and credit score: \_\_\_\_\_ Yes \_\_\_\_\_ Not applicable

Verified applicant's income : \_\_\_\_\_ Yes \_\_\_\_\_ Not applicable

Verified applicant's available cash for down payment and closing costs: \_\_\_\_\_ Yes \_\_\_\_\_ Not applicable

Reviewed applicant's debts and other assets: \_\_\_\_\_ Yes \_\_\_\_\_ Not applicable

Applicant is approved for the loan provided that the applicant's creditworthiness and financial position do not materially change prior to closing and provided that the following additional conditions are fully satisfied:

1. The subject property is appraised for an amount not less than \$\_\_\_\_\_:
2. The mortgage banker does not object to encumbrances to title shown in the title commitment or survey;
3. The subject property's condition meets mortgage banker's requirements;
4. The subject property is insured in accordance with the mortgage banker's requirements;
5. The applicant executes the loan documents the mortgage banker requires and abides by closing instructions; and
6. The following additional conditions are complied with (list):

This conditional approval expires on\_\_\_\_\_.

\_\_\_\_\_  
Mortgage Banker

**10. Discussion of and Possible Action Regarding Anticipated and Pending Litigation:**

**a. Anticipated Litigation**

None.

**b. Pending Litigation**

None